

AMENDMENT NUMBER ONE

TO AN AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS (CITY)

AND

KIMLEY-HORN AND ASSOCIATES, INC. (CONSULTANT)

FOR

ENGINEERING

DESIGN SERVICES

Made as of the _____ day of _____ in the year Two Thousand Ten:

BETWEEN the City:

The City of Frisco, Texas
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 292-5016

and the Consultant:

Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
Telephone: (972) 770-1300
Facsimile: (972) 239-3820

for the following Project:

**Professional Engineering Services to Revise
Engineering Design Standards and Construction
Details**

The City and the Consultant agree as set forth below.

THIS AMENDMENT NUMBER ONE is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and **Kimley-Horn and Associates, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Amendment Number One."

WHEREAS, the City and Consultant previously entered into an Agreement for professional engineering services to revise the Engineering Design Standards and

Construction Details, dated June 16, 2009, which Agreement is incorporated herein by reference as if fully set forth herein and is hereinafter referred to as the "Agreement;" and

WHEREAS, the City and Consultant desire to amend the Agreement for the purpose of extending the scope of the Project (defined in the Agreement) to include Additional Services; revising the Project schedule (defined in the Agreement) to extend the number of days that Consultant has in order to complete the Project; revising the Consultant's Fee (defined in the Agreement) to include the provision of the Additional Services; revising the percentage of the final payment of the Consultant's Fee (defined in the Agreement) allocated towards the completion of the Project Record Documents; referencing the Additional Services for the Project in relation to the Consultant's submission of invoices to the City for work on the Project; and referencing the Additional Services in relation to the City's ownership of the Project Documents, which Agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number One;" and

WHEREAS, the City and Consultant desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant do mutually agree as follows:

1. **Additional Project Services.** City and Consultant agree that this Amendment Number One amends the Agreement for the purpose of, among other things, establishing additional Project services to be performed by Consultant, as more particularly described in the following exhibits, attached hereto and incorporated herein for all purposes:
 - a. Exhibit "H," Scope of Additional Services, dated May 20, 2010.
 - b. Exhibit "I," Compensation Schedule / Project Billing / Project Budget for the Scope of Additional Services, dated May 20, 2010.
2. **Amendment to Agreement, Article 1, Section 1.2, Scope of Services** – Article 1, Section 1.2 of the Agreement is hereby amended as follows:
 - "1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," **and Exhibit "H,"** which **is are** attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services

described in Exhibit "A," and Exhibit "H," in the form of written change orders, may be authorized from time to time by the City."

3. **Amendment to Agreement, Article 1, Section 1.3, Schedule of Work** – Article 1, Section 1.3 of the Agreement is hereby amended as follows:

"1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B," and the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "I" and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than **May 14, 2010 December 31, 2010.**"

4. **Amendment to Agreement, Article 3, Section 3.1, Compensation for Consultant's Services** – Article 3, Section 3.1 of the Agreement is hereby amended as follows:

"3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on ~~a reimbursable~~ an hourly basis, for an amount not to exceed ~~Two Hundred Ninety Five Thousand Two Hundred and 00/100 Dollars (\$295,200.00)~~ Three Hundred Ninety-Five Thousand Three Hundred and 00/100 Dollars (\$395,300.00), ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B," and the Compensation Schedule / Project Billing / Project Budget for Additional Services, dated May 20, 2010 as set forth in Exhibit "I.""

5. **Amendment to Agreement, Article 3, Section 3.1.1, Completion of Record Documents**. Article 3, Section 3.1.1 of the Agreement is hereby amended as follows:

"3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final ~~five percent (5%)~~ three and seven-tenths percent (3.7%) of the Consultant's Fee, or Fourteen Thousand Seven Hundred Sixty and 00/100 Dollars (\$14,760.00). The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of

the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement."

6. **Amendment to Agreement, Article 3, Section 3.1.4.6, TDLR Notice of Substantial Compliance.** Article 3, Section 3.1.4.6 of the Agreement is hereby amended as follows:

"3.1.4.6 **TDLR Notice of Substantial Compliance** – TDLR shall provide a Notice of Substantial Compliance to the City after the newly constructed Project has had a satisfactory inspection, or Consultant has submitted verification of corrective modifications. City and Consultant agree that the final ~~five percent (5%)~~ **three and seven-tenths percent (3.7%)** of the Consultant's Fee, or Fourteen Thousand Seven Hundred Sixty and 00/100 Dollars (\$14,760.00) shall not be paid until the City is in receipt of the TDLR's Notice of Substantial Compliance for all Project components and/or phases of the Project."

7. **Amendment to Agreement, Article 3, Section 3.4, Invoices.** Article 3, Section 3.4 of the Agreement is hereby amended as follows:

"3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B," **and Exhibit "I."** On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background materials shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges."

8. **Amendment to Agreement, Article 4, Section 4.1, Documents Property of the City.** Article 4, Section 4.1 of the Agreement is hereby amended as follows:

"4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished

with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A" **and Exhibit "H."** Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" **and Exhibit "H"** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City's own risk."

9. **Complete Agreement.** This Amendment Number One, including the exhibits attached hereto and labeled "H" through "I," both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number One may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. Exhibits "H-I" are attached hereto and made a part of the Agreement and this Amendment Number One.
10. **Counterparts.** This Amendment Number One may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number One. A facsimile signature will also be deemed to constitute an original if properly executed.
11. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.
12. **Defined Terms / Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.

13. **Authority to Execute.** The individuals executing this Amendment Number One represent and warrant that they are empowered and duly authorized to so execute this Amendment Number One on behalf of the parties they represent.
14. **Entire Agreement / Amendment Number One.** This Amendment Number One, and the Agreement embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof.
15. **Venue.** The Agreement and Amendment Number One shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
16. **Assignment.** This Amendment Number One may not be assigned except as authorized in the agreement.
17. **Appropriation of Funds.** Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2009-2010 fiscal year. City will give Consultant sixty (60) days notice if funds for City's performance are no longer budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of the City's 2009-2010 fiscal year unless and until such funds are budgeted.

IN WITNESS WHEREOF, the parties have executed this Amendment Number One to the Agreement, and caused this Amendment Number One to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY

The City of Frisco, Texas

By: _____

Name: George Purefoy

Title: City Manager

CONSUTLANT

Kimley-Horn and Associates, Inc.

By: _____

Name: G.B. TRIBBLE P.E.

Title: SENIOR VICE PRESIDENT

APPROVED AS TO FORM:

Courtney A. Keykandal
Abernathy, Roeder, Boyd and Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 2010.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF Dallas:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED Brad Tribble, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 9th DAY OF June, 2010.

Jennifer L. Pena

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 7-23-13

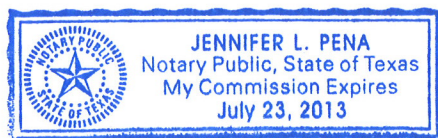


EXHIBIT “H”
SCOPE OF ADDITIONAL SERVICES, DATED MAY 20, 2010

**Amendment Number One to an Agreement
by and between the City of Frisco, Texas (City)
and Kimley-Horn and Associates, Inc. (Consultant)
for Professional Engineering Services to Revise
Engineering Design Standards and Construction Details (Project)**

I. PROJECT DESCRIPTION.

The City Engineering Services Department requested Consultant to revised the City's Engineering Design Standards and Construction Details. The original Agreement included the following services and is anticipated to be complete by May 2010:

- **Evaluation** – Evaluate the City's current Engineering Design Standards and related ordinances, guidelines and construction specifications and details.
- **Recommendations** – Based upon the results of the Evaluation phase, identify current Standards to keep or revise, and what new Standards need to be developed.
- **Development** – This phase of the Project will focus on developing the Standards recommended in the previous phase.

After the DRAFT Standards are developed, Consultant will begin the Concurrence phase of the Project by facilitating an “end-user” outreach program. The DRAFT Standards will be reviewed and comments addressed in an effort to provide a user-friendly set of Standards that meet both the City's and the Development, Engineering and Construction Communities' needs. Finally, Consultant will facilitate the orderly implementation of the new Standards and provide training on their use.

Amendment Number One includes services for the following phases and is anticipated to be complete by December 2010:

- **Concurrence** – The purpose of this phase of the Project is to provide outreach to the development, engineering and construction communities to introduce the new, DRAFT Standards and ask for their review and comment.
- **Implementation** – After the Standards have been evaluated and review comments addressed, the City will begin an implementation phase that includes a formal introduction of the new standards and training on how to use the new, web-based solutions.

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES, DATED MAY 20, 2010

II. TASK SUMMARY, ADDITIONAL SERVICES.

A. **Task Four, Concurrent Phase** – Consultant shall ensure the completion of the following items relating to this task:

4.1 Project Management.

4.1.1. ***Project Communication.***

4.1.1.1 Conduct progress meetings with City staff and Consultant discipline leaders at the Consultant's Frisco office (up to four (4) meetings are anticipated).

4.1.1.2 Prepare and e-mail summary reports to the Project team after each progress meeting.

4.1.2 ***Administration.***

4.2 Upon City staff approval of DRAFT comments, hold planning sessions with the City to establish consensus building program.

4.2.1 Identify Stakeholders.

4.2.2 Conduct up to three (3) meeting with City Staff, Development and Capital Engineers, Contractors and other Stakeholders.

4.2.3 Gather input.

4.2.4 Incorporate input.

B. **Task Five, Implementation Phase** – Consultant shall ensure the completion of the following items relating to this task:

5.1 Assist the City in publishing the FINAL documents.

5.2 Provide electronic files for the City's use on the City's website.

5.3 Develop a training program for City staff.

5.3.1 Attend up to two (2) meetings with City staff.

C. **Task Six, Additional Services** – Consultant shall ensure the completion of the following items relating to this task:

6.1 Preparation for and attendance at additional progress / workshop meetings.

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES, DATED MAY 20, 2010

- 6.2 Additional significant revisions and/or updates based on Stakeholder feedback beyond those identified in the Scope of Additional Services.
- 6.3 Completion of Standard Details for Paving, Traffic, Drainage, Utilities and Miscellaneous disciplines.
- 6.4. Furnish hard copies of review documents and/or final documents.
- 6.5 Website creation or population of data services.
- 6.6 Evaluate the City's current Right-of-Way Ordinance. Consultant shall ensure the completion of the following items relating to this task:
 - 6.6.1 Identify inconsistencies with proposed Engineering Design Standards;
 - 6.6.2 Identify language to keep, review or develop new language;
 - 6.6.3 Develop new Ordinance in coordination with the City Attorney;
 - 6.6.4 Implement new Ordinance.

III. ITEMS NOT INCLUDED IN THE SCOPE OF ADDITIONAL SERVICES.

A. **Additional Items not included in the Scope of Additional Services** – City and Consultant agree that the following services are beyond the Scope of Additional Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

- 1 **Scope of Services for the Project in Relation to Article 3, Section 3.1.1 of the Standard Form Agreement** – Under the Scope of Additional Services to be performed by Consultant under this Agreement, Consultant shall not be responsible for creation or submittal of Record Documents and/or "As-Built" Documents.
- 2 **Scope of Services for the Project in Relation to Article 3, Section 3.1.4.6 of the Standard Form Agreement** – Under the Scope of Services to be performed by Consultant under this Agreement, Consultant shall not be responsible for obtaining the Notice of Substantial Compliance from the Texas Department of Licensing and Regulation ("TDLR").
- 3 **Scope of Services for the Project in relation to Article 3, Section 3.1.2 of the Standard Form Agreement** – Under the Scope of Services to be

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES, DATED MAY 20, 2010

performed by Consultant under this Agreement, Consultant shall not be responsible for performing Construction Administration Services.

IV. DELIVERABLES.

A. **Required Deliverables** – At the completion of Task 4 and Task 5, Consultant shall ensure the completion and delivery of the following products to the City:

1. Submittal (all electronic) shall consist of REVISED DRAFT Documents to the City for review and approval; deliverables shall include:
 - 1.1 Design Standards Manual.
 - 1.2 Design Standard Construction Details.
 - 1.3 Design Technical Specifications.
2. Incorporate City review comments.
3. Submittal (all electronic) of FINAL Documents to City; Deliverables shall include:
 - 3.1 Design Standards Manual.
 - 3.2 Design Standard Construction Details.
 - 3.3 Technical Specifications.

V. PROJECT LABOR DESCRIPTION.

Task	Subtask	Labor Hours
TASK 4	Concurrence Phase	171.0
TASK 5	Implementation Phase	76.0
TASK 6	Additional Services	360.0
GRAND TOTAL		607.0

EXHIBIT "I"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET
FOR THE SCOPE OF ADDITIONAL SERVICES, DATED MAY 20, 2010

Amendment Number One to an Agreement
by and between the City of Frisco, Texas (City)
and Kimley-Horn and Associates, Inc. (Consultant)
for Professional Engineering Services to Revise
Engineering Design Standards and Construction Details (Project)

I. COMPENSATION SCHEDULE / PROJECT BUDGET SUMMARY.

MONTH / DATE / YEAR	DOLLAR AMOUNT	TASK COMPLETED
June 15, 2010	--	City Council approval of a Resolution authorizing the City Manager to execute the Amendment Number One; City issues Notice to Proceed to Consultant.
June 30, 2010	--	Consultant's receipt of fully executed Amendment Number One.
October 31, 2010	\$ 27,100.00	Task Four, Concurrence Phase (Task Completed and all task-related deliverables completed as stated in and Exhibit "H" and accepted by the City).
December 31, 2010	\$ 13,000.00	Task Five, Implementation Phase (Task Completed and all task-related deliverables completed as stated in Exhibit "H" and accepted by the City).
December 31, 2010	\$ 60,000.00	Task Six, Additional Services (Task Completed and all task-related deliverables completed as stated in Exhibit "H" and accepted by the City).
TOTAL CONSULTANT'S FEE, AMENDMENT NUMBER ONE (NOT- TO-EXCEED)	\$ 100,100.00 --	

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES, DATED MAY 20, 2010

II. PROJECT BUDGET SUMMARY.

A. Description of Basic Services.

1. Subtotal, Basic Services (Not-to-Exceed). \$ -

B. Description of Special Services.

1. Task Four, Concurrence Phase. \$ 27,100.00

2. Task Five, Implementation Phase. \$ 13,000.00

3. Task Six, Additional Services \$ 60,000.00

4. Subtotal, Special Services (Hourly, Not-to-Exceed). \$ 100,100.00

C. Description of Direct Expenses.

1. Subtotal, Direct Expenses (Not-to-Exceed). \$ -

**D. Grand Total, Consultant's Fee Amendment Number One
(Hourly, Not-to-Exceed). \$ 100,100.00**

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES, DATED MAY 20, 2010

III. SUMMARY OF PROJECT BUDGET REVISIONS.

	Original Agreement	Amendment Number One	Revised Project Budget
<u>Basic Services</u>			
Task One, Evaluation Phase	\$ 37,500.00	\$ -	\$ 37,500.00
Task Two, Recommendation Phase	\$ 43,700.00	\$ -	\$ 43,700.00
Task Three, Development Phase	\$ 214,000.00	\$ -	\$ 214,000.00
<i>Subtotal, Basic Services</i>	<u>\$ 295,200.00</u>	<u>\$ -</u>	<u>\$ 295,200.00</u>
<u>Additional Services - Special Services</u>			
Task Four, Concurrence Phase	\$ -	\$ 27,100.00	\$ 27,100.00
Task Five, Implementation Phase	\$ -	\$ 13,000.00	\$ 13,000.00
Task Six, Additional Services	\$ -	\$ 60,000.00	\$ 60,000.00
<i>Subtotal, Additional Services - Special Services</i>	<u>\$ -</u>	<u>\$ 100,100.00</u>	<u>\$ 100,100.00</u>
<u>Grand Total, Consultant's Fee (Hourly, Not-to-Exceed)</u>	<u><u>\$ 295,200.00</u></u>	<u><u>\$ 100,100.00</u></u>	<u><u>\$ 395,300.00</u></u>